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REPORT TO THE COMMITTEE ON GOVERNMENT
EFFICIENCY & OPENNESS

USE OF EMINENT DOMAIN BY THE REDEVELOPMENT AGENCY
OF THE CITY OF SAN DIEGO

INTRODUCTION

At the meeting of the Committee on Government Efficiency and Openness [GE&O Committee] on September 12, 2005, the GE&O Committee directed the City Manager, City Attorney, and the Redevelopment Agency to analyze redefining the term "public use" so that eminent domain could not be used to take private property for private gain.

DISCUSSION

A. Public Use Definition

The right of eminent domain exists only when the taking is for a public use. Cal. Const., art. I, § 19; Cal. Civ. Proc. Code § 1240.010; *People v. Chevalier*, 52 Cal. 2d 299, 304 (1959). The GE&O Committee has requested that the term "public use" be limited to exclude the use of eminent domain by the Redevelopment Agency to take private property for private gain. The City Attorney recommends that that this objective be achieved by (i) recommending that the state policy committees (Senate Local Government Committee, Senate Transportation and Housing Committee, Assembly House and Community Development Committee, Assembly Local Government Committee, and Assembly Judiciary Committee) introduce and pass legislation authorizing local governments to restrict the scope of "public use"; (ii) monitoring state legislation to determine if the state legislature has taken any action to limit the use of eminent domain; and (iii) adopting a Redevelopment Agency Policy that establishes guidelines and procedures by which the Redevelopment Agency uses eminent domain.

B. California Redevelopment Agency Eminent Domain Authority

California redevelopment agencies derive their authority to exercise the power of eminent domain from an express grant in the California Community Redevelopment Law [CRL]. Cal. Health & Safety Code § 33391. Section 33342 of the CRL provides that "Redevelopment plans may provide for the agency to acquire by gift, purchase, lease, or condemnation all or part of the real property in the project area."

C. State Legislation Recommendation

The City Attorney recommends that the GE&O Committee advise the state policy committees to consider a new bill limiting the use of eminent domain. The bill would authorize local governments to enact local ordinances to restrict the use of eminent domain. This bill would effectively grant the City of San Diego the authority to legislatively limit the authority of the Redevelopment Agency to exercise its powers of eminent domain. The City Attorney has prepared a letter on behalf of the GE&O Committee to the state policy committees to request consideration of this bill. The City Attorney recommends that the letter be sent to Senator Christine Kehoe, the legislator who is spearheading the public hearings on redevelopment reform. Attached as Exhibit 1 is a draft letter.

D. Proposed State Legislation

During the fall interim recess this year, the five policy committees (Senate Local Government Committee, Senate Transportation and Housing Committee, Assembly House and Community Development Committee, Assembly Local Government Committee, and Assembly Judiciary Committee) held two joint interim hearings on redevelopment reform to prepare legislators to act on redevelopment bills when the Legislature reconvenes on January 4, 2006. The purpose of the hearings was to review how the state statutes work and to determine if the legislature should amend those laws. The hearing on October 26, 2005, focused legislators' attention on the statutory blight definition. The joint interim hearing on November 17, 2005, focused on redevelopment reform proposals and possible legislative changes to the Community Redevelopment Law and related statutes. Specifically, the state legislators reviewed possible redevelopment reforms in five areas: (i) statutory definition of "blight," (ii) local redevelopment practices, (iii) state oversight of redevelopment, (iv) litigation procedures, and (v) using eminent domain.

The following is a brief summary of the specific bills on redevelopment reform being considered by the state legislature:

1. AB 590 ("Eminent Domain: Private Property"): This bill relates to the Eminent Domain Law that authorizes public entities to acquire property only for a public use. It provides that public use does not include the taking or damaging of property for private use, including, but not limited to, the condemnation of non-blighted property for private business development.
2. AB 1162 ("Eminent Domain"): A "gut and amend"¹ to AB 1162 inserts provisions that apply a moratorium to the exercise of eminent domain on owner-occupied residential property for "private use," which is defined as any use other than use as a public facility or public works that is owned and operated by a public entity. The bill was passed out of

¹ Under a practice termed "gut and amend," lawmakers remove the provisions of "dormant or dead bills" and replace them with new legislation. This practice effectively allows lawmakers to introduce new bills after the deadline to propose legislation passes.

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committee, with a vote of 5-2 on the condition that the authors of pending amendments agree on final language. It was agreed that the moratorium would apply to those properties for which "resolutions of necessity" had not been adopted. The bill was heard in and passed out of the Senate Judiciary Committee by a vote of 5-2. It went to the Senate Rules Committee where it was not acted on in the last days of the 2005 session.

3. ACA 15 ("Eminent Domain: Redevelopment"): ACA 15 provides a Constitutional amendment relating to eminent domain that would require that a redevelopment agency make a written finding that a property has both physical and economic blight before it can be acquired through eminent domain. The bill was not acted on before the end of the 2005 session.
4. ACA 22 ("Eminent Domain: Condemnation Proceedings"): This bill amends provisions of the Constitution that authorize governmental entities to take private property for public use to require that the property be owned and occupied by the condemnor. The bill provides that if the property ceases to be used for the stated public use, the former owner has the right to reacquire the property.
5. SB 53 ("Redevelopment"): A "gut and amend" to SB 53 inserts language requiring redevelopment plans to include a description of plans for use of eminent domain in the project area and permits prohibitions in plans such as the taking of owner-occupied or single-family residences or other residential property. The bill sets a 10-year limit (if a plan is adopted after January 1, 2006) or July 1, 2009 deadline (if a plan is adopted before January 1, 2006) for the commencement of eminent domain proceedings within a project area. Currently, agencies may prohibit the use of eminent domain and current law provides a 12-year limit on the commencement of eminent domain proceedings. SB 53 may be used as a "spot bill" available for future amendments. It is a two-year bill.
6. SCA 12 ("Eminent Domain"): This "gut and amend" of SCA 12 proposes a Constitutional amendment that would declare that "public use" does not include the taking of owner-occupied residential property for private use. SCA 12 was heard in the Senate Judiciary Committee and the author asked for the bill to be held in committee, and that the subject matter be referred to the Committee on Rules for assignment to the proper committee for study.
7. SCA 15 ("Eminent Domain: Condemnation Proceedings"): This bill amends provisions of the Constitution that authorize governmental entities to take private property for public use to provide that the property must be owned and occupied by the condemnor. It provides that if the property ceases to be used for the stated public use, the former owner has the right to reacquire the property. A recent amendment deleted a provision that would have allowed the original owner of a property taken through eminent domain to reacquire the property for its original compensated amount if that property at any time in the future ceased being used for a public use. The same provision remains in the bill except that the property in question could be reacquired by the original owner by paying "fair market value." SCA 15 was heard in the Senate Judiciary Committee on August 30

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and failed to pass out of committee by a vote of 2-3. Reconsideration of the bill was granted.

In addition to the pending bills being considered by the state legislature, the committees also considered the following proposed changes of the redevelopment law relating to the use of eminent domain:

- Require voter approval of future redevelopment plans that propose to use eminent domain.
- Prohibit the use of eminent domain by redevelopment agencies more than 12 years after the adoption of the redevelopment plan unless the agency makes a finding that blight still exists and the eminent domain action will directly and substantially assist in eradicating the remaining blight.
- Prohibit elected officials from accepting campaign contributions from entities that have received or are reasonably likely to receive land acquired through eminent domain. Officials who have already received contributions from such entities must recuse themselves from any vote on the eminent domain action.
- Make it a conflict of interest in an eminent domain action for a redevelopment official to be on the board of an organization with an existing or likely future financial interest in the property.
- Require redevelopment agencies to pay attorney fees and treble damages in cases where a property is illegally taken.
- Require redevelopment agencies, in cases where a court determines a higher value for the property than that offered by the public entity, to pay attorney fees and twice the difference in value.
- Require the Department of Real Estate to maintain a list of appraisers who are qualified and interested in performing appraisals in eminent domain cases. Require the public entity seeking an appraisal for purposes of an eminent domain action to obtain and use a randomly assigned appraiser from the list.
- Require the condemning redevelopment agency, if requested by the property owner, to pay for an independent appraisal conducted by an appraiser to be selected by the owner.

The GE&O Committee's concern about the potential abuse of eminent domain is being addressed in the California legislature. There are currently a number of legislative bills in the California legislature which seek to restrict the use of eminent domain, including restricting a redevelopment agency's ability to use eminent domain to take private property for private gain.

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It appears that state legislators are poised to take action when the Legislature convenes in January 2006. In her opening comments, Senator Christine Kehoe, Chair of the Senate Local Government Committee, stated that "5 or 6" bills on redevelopment would be considered in January. The City Attorney's Office in conjunction with the Redevelopment Agency, its staff, and Intergovernmental Relations will continue to monitor new state and federal legislation on eminent domain that is being introduced and considered so that the Redevelopment Agency can determine the impact of the new legislation upon its use of eminent domain.

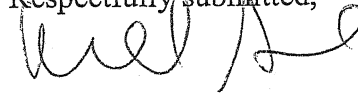
E. Redevelopment Agency Policy

The Redevelopment Agency is charged with the responsibility of establishing policies to guide its programs and activities and to establish procedures by which the Agency's functions are performed. The City Attorney recommends that the Redevelopment Agency adopt its own policy to establish guidelines and procedures by which the Redevelopment Agency exercises eminent domain.

CONCLUSION

The City Attorney recommends that the GE&O Committee take the following actions to address its concerns on the use of eminent domain by the Redevelopment Agency: (i) recommend that the State Legislature consider a bill authorizing local governments to restrict the use of eminent domain; (ii) monitor legislation to determine if any action has been taken to limit the use of eminent domain; and (iii) adopt a Redevelopment Agency policy that establishes guidelines by which the Agency exercises eminent domain.

Respectfully submitted,



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MJA:ECC:nda
Attachment
RC-2005-28